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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Athens Date: JUN 24 2003

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The Form I-601 application was denied by the Officer in Charge, Athens, Greece, and the matter is now before the Administrative Appeals Office on appeal. The decision will be withdrawn, and the appeal will be rejected.

The applicant is a native and citizen of Jordan who was admitted to the United States in 1980 as nonimmigrant visitor with authorization to remain until June 1980. The applicant remained longer than authorized without applying for or receiving an extension of temporary stay. On June 15, 1994, the applicant applied for temporary resident status, and that status was terminated on August 15, 1994. On October 30, 1995, he was served with an Order to Show Cause. The applicant's hearing was continued until May 12, 1998, when an immigration judge ordered the applicant removed from the United States *in absentia*. Therefore, he is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii), and requires permission to reapply under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), on Form I-212.

The applicant was also found to be inadmissible to the United States by a consular officer under section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii), for having been unlawfully present in the United States for an aggregate period of one year or more. The applicant is the beneficiary of an approved family-based preference visa petition as the spouse of a U.S. citizen. The applicant seeks a waiver of the permanent bar under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), on Form I-601.

The applicant appeared at the U.S. Embassy in Amman, Jordan, on February 15, 1999 to establish that he had departed from the United States. The applicant divorced his first wife, [redacted] in March 1977 and married [redacted] in 1980 in the United States. He divorced [redacted] in May 1984 and remarried [redacted] in May 1996, while he was in removal proceedings. [redacted] became a naturalized U.S. citizen on September 20, 1996.

The officer in charge noted in his decision that the Application for Permission to Reapply for Admission (Form I-212) had been denied. The officer in charge then concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel discusses the applicant's 19 year residence in the United States and the impact of his removal on his family members as well as the community. Counsel argues that the officer in charge failed to adequately weigh the financial, social, educational and emotional impact on the applicant's nine U.S. citizen and lawful permanent resident children. Counsel states that the applicant's immigration history was not precipitated by criminal activity but rather by a simple overstay.

[redacted]

Service instructions at O.I. § 212.7 specify that a Form I-212 application will be adjudicated first when an alien requires both permission to reapply for admission and a waiver of grounds of inadmissibility. If the Form I-212 application is denied, then the Form I-601 shall be rejected on the ground that the applicant is not "otherwise admissible", as required, and the fee for filing the application refunded.

The present record does not contain evidence that the applicant has remained outside the United States for ten consecutive years since the date of deportation or removal as required by 8 C.F.R. § 212.2(a), or that he was granted permission to reapply for admission to the United States.

Therefore, since there is evidence that the Form I-212 application has been denied in this instance, the officer in charge's decision denying the Form I-601 application will be withdrawn, the application will be rejected, and the appeal will be rejected.

ORDER: The appeal is rejected. The officer in charge's decision denying the Form I-601 application is withdrawn, and the application is rejected.